IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.291 OF 1993
AND
FIRST APPEAL NO.292 OF 1993

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First Appeal No. 291 of 1993

Chandulal Punamchand Kasliwal.. **Appellant (Original claimant)**

..**versus**.

The Special Land Acquisition Officer, Nasik .. **Respondent (Original opponent)**

...

First Appeal No. 292 of 1993

Khushalchand Brikchand Kasliwal.. **Appellant (Original claimant)**

..**versus**.

The Special Land Acquisition Officer, Nasik .. **Respondent (Original opponent)**

Mr. A.J. Ahuja, Advocate, for Appellants.
Mr. Bharat Mehta, AGP for Respondents.

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Coram : K.J. Rohee, J.

Reserved on : 24h April, 2006.

Pronounced on : 27th April, 2006.

Judgment :

1. These appeals are directed against the Judgment and Award dated 9.1.1992 by Joint District Judge, Nasik in Land Reference Nos. 215/1987 and 217/1987.

2. The land of the appellants/claimants situated at village Rahud, tahsil Chandwad, district Nasik was acquired for construction of a Dam under Notification dated 13.4.1981. The Special Land Acquisition Officer awarded compensation @ Rs.9100/- per hectare for cultivable land and Rs.200/- per hectare for non-cultivable land. The appellants thought that the said compensation was grossly inadequate looking to the quality of the land and the income derived therefrom. The appellants, therefore, moved the Reference Court for grant of enhanced compensation. Two other land owners also moved the Reference Court and the Reference Court decided four references by common judgment which is impugned.

3. The appellant in First Appeal No.291 of 1993 claimed compensation @ Rs.25,000/- per hectare while the appellant in First Appeal No.292 of 1993 claimed compensation @ Rs.20,000/- per hectare. It seems that common evidence was recorded. The appellants examined

themselves and three more witnesses. The Opponent/State examined one witness. After considering the evidence on record, the Reference Court rejected the prayer for enhanced compensation, but granted component under Section 23 (1-A), Solatium under Section 23 (2) and interest under Section 28 of the Land Acquisition Act. The appellants have challenged the order rejecting enhanced compensation.

4. I have heard Mr. Anil Ahuja, Advocate for the appellants and Mr. Bharat Mehta, AGP for the respondent/State.

5. The only point that arises for determination is whether the appellants/claimants are entitled to enhanced compensation and if so, to what amount. My finding is in the affirmative.

REASONS

6. The appellants adduced evidence about certain sale instances which took place before the notification for acquisition was published. The Reference Court rejected the evidence regarding sale instances on the ground that the sale instances related to irrigated land whereas there is no evidence to show that the appellants' land which has been acquired was irrigated though there was a well in it and it was on the bank of a river. Another ground was that in one of

the sale instances was related to the close relative of the appellants and after learning about the proposed acquisition. There are certain strange observations made by the Reference Court that there may not be water either in the well or in the river. One can understand that there may not be evidence that the land acquired was irrigated from well water or river water. The Reference Court also held that the sale instances do not depict true market value as one of the transactions was not between a willing purchaser and willing seller. The Reference Court also observed that the lands under acquisition are not profitable for cultivation because they are situated in hilly track. Suffice it to say that the reasoning given by the Reference Court for rejecting the evidence of sale instances is based on its own peculiar surmises and conjectures. Even-if it is presumed that the land under acquisition was unirrigated whereas the land under sale instances was irrigated, the Reference Court has not properly appreciated the evidence adduced by the appellants/claimants. The Reference Court is rather influenced by its own observations than the evidence on record.

7. It may be noted that the Reference Court has totally lost sight of the fact that the land acquired is adjacent to National Highway No.3 viz. Bombay-Agra road and on the opposite side there is industrial area. It seems that the Reference Court was swed away by the fact that till then no

factory started functioning in the industrial area. However, the potentiality of the adjacent land as industrial area should not have been ignored. The Reference Court committed error in neglecting this important aspect of the case. Considering the above circumstances, in my opinion, the market price of the land acquired can be taken to be Rs.15,000/- per hectare. Considering the small quantity of the land acquired, I do not think it necessary to fix separate compensation for cultivable land and non-cultivable land .The appellants are, therefore, entitled to compensation @ Rs.15,000/- per hectare. Hence the order:

ORDER:

i) The appeals are partly allowed.

ii) The judgment and award of the trial Court so far as it relates to rejection of the appellants' claim for enhanced compensation is set aside and it is hereby directed that the Opponent/State shall pay enhanced compensation to the appellants @ Rs.15,000/- per hectare. Needless to say that component under 23 (1-A), Solatium under 23(2) and interest under 28 of the Land Acquisition Act as granted by the Reference Court shall be calculated on the said amount of enhanced compensation. An award be drawn up accordingly. In the circumstances of the case, no order as to costs.

(K. J. Rohee, J.)

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